

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MOTOR CITY ELECTRIC COMPANY,

Plaintiff-Appellant,

v

DUMAS CONCEPTS IN BUILDING, INC., and  
JUNIUS L. DUMAS,

Defendants-Appellees.

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UNPUBLISHED

May 9, 2006

No. 267000

Wayne Circuit Court

LC No. 05-500787-CK

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting summary disposition and judgment in favor of plaintiff for \$76,876.08, and dismissing plaintiff's claims against the individual defendant pursuant to MCR 2.116(C)(10) and MCR 2.116(1)(2). We reverse in part and affirm in part as modified. This case is being decided without oral argument pursuant to MCR 7.214(E).

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." Summary disposition may be granted to a nonmoving party "if it appears to the court that the opposing party, rather than the moving party, is entitled to judgment . . . ." MCR 2.116(I)(2). This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Plaintiff entered into a subcontract with the corporate defendant Dumas Concepts in Building, Inc. ("defendant"), for electrical work at a Detroit Edison ("DTE") substation in Ypsilanti. Defendant Junius Dumas ("Dumas") is the principal, president, and sole shareholder of defendant. Plaintiff alleged that defendant owed it \$120,175 for work under its contract. The complaint contained five counts, styled as "BREACH OF CONTRACT," "VIOLATION OF BUILDING CONTRACT TRUST FUND ACT," "ACTION ON ACCOUNT STATED," "BREACH OF FIDUCIARY DUTY," and "PIERCING THE CORPORATE VEIL."

Plaintiff moved for summary disposition in the full amount requested, \$120,175. The circuit court explained that it was granting summary disposition to plaintiff for \$76,800 and "whatever change there might be" because that was all plaintiff had shown and "because you come to court with nothing else indicating that more than that is owed."

On appeal, the parties do not dispute that defendant owed plaintiff \$76,876.08 for work under the contract. Their disagreement concerns defendant's additional liability, if any, for change orders. Plaintiff claims that the trial court should have granted only partial summary disposition with respect to the amount that was not in dispute and allowed the parties to continue to litigate the issue of defendant's indebtedness for the change orders. Defendant asserts that its liability for the change orders is preconditioned on DTE's acceptance and payment of them, and that the evidence showed that each of the change orders submitted by plaintiff was rejected by DTE. Plaintiff does not dispute the former point, but claims that there are issues of fact concerning whether DTE rejected the change orders and the amount of the indebtedness.

We agree with plaintiff that the court's grant of summary disposition was premature. Summary disposition under MCR 2.116(C)(10) is premature if granted before discovery on a disputed issue is complete, *Bellows v Delaware McDonald's Corp*, 206 Mich App 555, 561; 522 NW2d 707 (1994), unless "further discovery does not stand a fair chance of uncovering factual support for the position of the party opposing the motion." *Prysak v R L Polk Co*, 193 Mich App 1, 11; 483 NW2d 629 (1992). At the very least, the evidence before the court showed that there was a reasonable chance that further discovery could result in factual support for plaintiff's position with respect to the change orders. Defendant presented a spreadsheet and maintained that it showed that change orders submitted by plaintiff were rejected by DTE. But the spreadsheet on which defendant relies does not establish that each of the change orders submitted by plaintiff was rejected by DTE.

Plaintiff further argues that the circuit court erred in granting summary disposition to Dumas, individually. Plaintiff alleged that Dumas had knowledge of and participated in defendant's violation of the builders' trust fund act, MCL 570.151.

The elements of a civil cause of action under the builders' trust fund act include:

(1) the defendant is a contractor or subcontractor engaged in the building construction industry, (2) a person paid the contractor or subcontractor for labor or materials provided on a construction project, (3) the defendant retained or used those funds, or any part of those funds, (4) for any purpose other than to first pay laborers, subcontractors, and materialmen, (5) who were engaged by the defendant to perform labor or furnish material for the specific project. [*DiPonio Constr Co, Inc v Rosati Masonry Co, Inc*, 246 Mich App 43, 49; 631 NW2d 59 (2001).]

The evidence indicated that DTE paid defendant, and defendant admitted that it owed plaintiff over \$76,000. "[A] reasonable inference of appropriation arises from the payment of construction funds to a contractor and the subsequent failure of the contractor to pay laborers, subcontractors, materialmen, or others entitled to payment." *H A Smith Lumber & Hardware Co v Decina*, 258 Mich App 419, 426; 670 NW2d 729 (2003), vacated in part on other grounds, 471 Mich 925 (2004). The evidence of payment by DTE to defendant and the admitted nonpayment by defendant to plaintiff supports a reasonable inference of appropriation. Dumas, as a corporate officer, may be individually liable under the builders' trust fund act if he participated in violating the act. See *People v Brown*, 239 Mich App 735, 740; 610 NW2d 234 (2000). Although plaintiff had not presented evidence that Dumas personally participated in violating the act at the time the court granted summary disposition, discovery was ongoing. Summary disposition to

Dumas individually with respect to plaintiff's claim under the builders' trust fund act was premature.

Apart from Dumas's potential liability under the builders' trust fund act, the "claim" alleged against Dumas individually was styled "PIERCING THE CORPORATE VEIL." Piercing the corporate veil is not a cause of action; it is a doctrine used to attach liability to shareholders where the corporate form has been abused. *Klager v Robert Meyer Co*, 415 Mich 402, 411-412; 329 NW2d 721 (1982); *SCD Chem Distributors, Inc v Medley*, 203 Mich App 374, 381; 512 NW2d 86 (1994); *Belleville v Hanby*, 152 Mich App 548; 394 NW2d 412 (1986). To the extent that the circuit court's ruling might be construed as a determination that the doctrine is inapplicable, the court was correct.

The circuit court's order is affirmed to the extent that it awards plaintiff judgment for \$76,876.08, that amount not being in dispute, but modified to specify that plaintiff is granted only partial summary disposition against defendant for that amount. Summary disposition with respect to defendant's alleged indebtedness for the change orders and with respect to Dumas' individual liability under the trust fund act was improper because discovery had not been completed.

Reversed in part and affirmed in part as modified.

/s/ Helene N. White  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot